"X"

IN THE REGIONAL DIVISION OF THE WESTERN CAPE HELD AT WYNBERG

CASE NUMBER: **RCD / WYN: 695 / 15**

WYNBERG: TUESDAY, 20 OCTOBER 2020
BEFORE THE HONOURABLE MAGISTRATE GREYVENSTEYN

WESTERN CAPE: WYNBERG
2020 -10- 20
MS M GREYVENSTEYN
REGIONAL MAGISTRATE

In the matter of:

MARK TIMOTHY HOLGATE Applicant

and

NICOLE DREYER Respondent

In re:

NICOLE DREYER-HOLGATE Plaintiff
(ID NO.: 710825 0046 08 7)

and

MARK TIMOTHY HOLGATE Defendant
(ID NO.: 710119 5070 08 0)

WESTERN CAPE: WYNBERG
2020-10- 20
MS M GREYVENSTEYN
REGIONAL MAGISTRATE

~~DRAFT~~ ORDER

HAVING READ THE PAPERS FILED OF RECORD, AND HAVING HEARD COUNSEL FOR THE APPLICANT AND HAVING HEARD THE RESPONDENT, IT IS AGREED BETWEEN THE PARTIES, THAT THE FOLLOWING ORDER IS MADE:

1. That the Order granted on 24 July 2015 ("the divorce order") under Case No.: RCD/ WYN 695 / 2015 be varied as follows: Save for the Order dissolving the bonds of marriage and the Decree of Divorce —

1.1. By deletion of Paragraphs 1 to 4 of the divorce order dated 24 July 2015 and, by the incorporation of the terms of the consent paper annexed hereto as **"CP1,"** save for paragraph 1.3, which position is currently regulated by an interim order dated 3 December 2019 by Magistrate Leppan and which proceedings are currently pending in the Wynberg Children's Court. (interim order attached and marked B)

1.2. It ~~noted is~~ is recorded up ~~that~~ that until the date of 16 November 2020, the parties will follow the parenting plan dated 28 August 2020. (that is currently not an Order of Court).

2. That a *rule nisi* be issued calling upon the Respondents erstwhile attorney, Glenville Hartzenberg, Hartzenberg Incorporated Attorneys to appear and show cause, if any, on **8 DECEMBER 2020** at 09H00 or as soon thereafter as the legal representative for the Applicant may be heard, why an order should not be granted in the following terms:

2.1. That Glenville Hartzenberg, Hartzenberg Incorporated Attorneys is ordered to pay the costs of this application de bonis propiis on an attorney-client scale.

By Order

Magistrate/Clerk of the Court

WESTERN CAPE: WYNBERG
2020 -10- 20
MS M GREYLENSTEYN
REGIONAL MAGISTRATE

"CP1" WESTERN CAPE: WYNBERG 2020 -10- 20 CP1 5

IN THE REGIONAL COURT FOR THE REGIONAL DIVISION OF THE WESTERN CAPE HELD AT WYNBERG

CASE NUMBER: RCD/WYN/

In the matter between:

NICOLE DREYER-HOLGATE (born Dreyer) PLAINTIFF

And

MARK TIMOTHY HOLGATE DEFENDANT

CONSENT PAPER

WHEREAS Plaintiff has instituted an action in the above Honourable Court against Defendant wherein Plaintiff claims, *inter alia*, a Decree of Divorce and certain other relief.

AND WHEREAS the Parties acknowledge that their marriage has broken down irretrievably and that there is no reasonable prospect for the restoration of a normal marriage relationship between them.

AND WHEREAS the parties have arrived at an agreement relating, *inter alia* to the custody of the minor child born of the marriage between them, maintenance payable in respect of the said minor child, and cost of suit, which agreement the parties hereto desire to record in writing and have incorporated in the Final Order of Divorce in the event of the above Honourable Court seeing fit to grant a Final Decree of Divorce dissolving the marriage between the parties.

AND WHEREAS THE DEFENDANT HEREBY WITHDRAWS HIS DEFENCE HEREIN.

SM

NOW THEREFORE THESE PRESENT WITNESSETH:

1. PARENTAL RIGHTS AND RESPONSIBILITIES

1.1. It is recorded that there is one minor child born of the marriage between the parties, namely **Jed** (hereafter: "the child").

1.2. The parties will continue to exercise shared parental responsibilities and rights in respect of the child as detailed in the Children's Act 38 of 2005 ("the Act") on the following basis:

1.2.1. the parties shall act as co-guardians of the child as provided for in Sections 18(2)(c), 18(3), 18(4) and 18(5) of the Act;

1.2.2. The Plaintiff's place of residence shall be the child's primary place of residence.

1.2.3. the parties will continue to be involved in the care of the child, including making decisions regarding the child's education, development and general wellbeing, due regard being had to their best interests;

1.2.4. the parties shall make joint decisions regarding the child's:

1.2.4.1. enrolment in any school, tertiary education institution, extra-mural activity or extra tuition;

1.2.4.2. any elective medical treatment or therapy that may be required by them (other than in the instance of an emergency);

1.2.4.3. Their removal from the Cape Peninsula and surrounds to another jurisdiction in South Africa, other than during holiday periods (when they shall at all times notify the other party of the child's whereabouts and contact telephone numbers);

1.2.4.4. A change in their religious upbringing.

1.2.4.5 In the event that agreement cannot be reached, the issue in dispute will be referred to a facilitator as contemplated in paragraph 2 below. Further decisions regarding the child will be made by the party in whose care the children are at the relevant time.

1.3 The Plaintiff shall have care of the minor children and primary residence of the child shall be with the Plaintiff, with the right of reasonable contact reserved to the Defendant.

(1.3.1) Defendant shall be awarded right of contact with the minor child in terms of section 18(2)(b) of the Children's Act 38 of 2005, set out hereunder:

(1.3.2) **Until the children reaches the school going age:**

(i) Every second and third week from Friday at 13H00 until Saturday at 17H30.

(ii) Religious holidays and Birthdays to alternate between the parties from year to year.

iii) Every first weekend of the month from Friday at 13H00 until Sunday at 13H00

iv) Jed will stay the full weekend with the Plaintiff on the last weekend of the month.

v) School holidays to be split between the Defendent and the Plaintiff

vi) Every Wednesday from 13H00 to Thursday 13H00

vii) Every Monday from 15H00 to 17H00

When the child reaches the school going age:

(i) Every second and third week from Friday at 13H00 until Saturday at 17H30.

(ii) Religious holidays and Birthdays to alternate between the parties from year to year.

iii) Every first weekend of the month from Friday at 13H00 until Sunday at 13H00

iv) Jed will stay the full weekend with the Plaintiff on the last weekend of the month.

(v) Half of every alternate school holiday (long and short)

(vi) Every Wednesday from 13H00 to Thu 17H00

2. FACILITATION

2.1 In order to facilitate the resolution of any disputes arising from the parties' exercise of their parental responsibilities and rights, including disputes regarding the issues referred to in paragraph 1.2.4 above and contact, a facilitator shall be appointed.

2.2 If the parties wish to refer a dispute to the facilitator, the dispute shall be formulated in writing and referred to the facilitator who shall attempt to resolve the dispute by way of mediation as speedily as possible and without recourse to litigation.

3. MAINTENANCE FOR THE MINOR CHILD

3.1 The Defendant agrees and undertakes to effect payment of the following amounts until each child respectively attains the age of eighteen (18) years or earlier becomes self-supporting; provided however that, if the child have not completed his tertiary education, the maintenance shall continue until completion notwithstanding the fact that the child shall be over eighteen (18) years of age, in the manner set out hereunder:

(i) Maintenance for the aforesaid minor child in the sum of R 5000.00 (one thousand Rand) per month;

(ii) The maintenance payable by the Defendant shall increase annually by the annual CPI rate on the anniversary date of the divorce;

(iii) All of the reasonable cost for educating the aforesaid minor child up to and inclusive of a tertiary education (should the

said minor child display an aptitude for higher learning) inclusive of all schooling and aftercare costs, uniform, extra-mural activities, crèche, fees and books; excluding after care.

(iv) Half of all medical costs for the child.

4. LIABILITIES

Each party shall be solely responsible for payment of the outstanding accounts and debts incurred in his or her own name during the subsistence of the marriage and that neither party shall have any claim against each other in this regard and each of them hereby indemnifies the other and undertakes to keep them indemnified against such accounts and debts.

5. COST OF SUIT

Each party shall pay his or her legal costs incurred herein.

6. FULL AND FINAL SETTLEMENT

The parties hereto acknowledge that the aforegoing constitutes a full and final settlement of all outstanding differences between them, and that save and except as herein provided, neither party shall enjoy any claim of whatsoever nature against the other.

7. NON-VARIATION

The parties acknowledge and agree that:

7.1 This agreement constitutes the entire contract between them and that no provisions, terms, conditions, stipulations, warranties or representations of whatsoever nature, whether express or implied have been made by either of the parties except as are recorded

herein;

7.2 No alteration, variation, amendment or purported consensual cancellation of this agreement or any deletion there from shall be of any force or effect unless reduced to writing and signed by or on behalf of the parties hereto.

DATED AT KENILWORTH ON THIS ____ DAY OF 2015

AS WITNESSES:

1. _____

2. _____

_____
PLAINTIFF (Nicole Dreyer-Holgate)

DATED AT CLAREMONT ON THIS ____ DAY OF 2014

AS WITNESSES:

1. _____

2. _____

_____
DEFENDANT (Mark Timothy Holgate)